



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 21 September 2018

STATUS Immediate

Nieuco Properties 1005 & another v Trustees for the Inkululeko Community Trust & others (872/2017) [2018] ZASCA 123 (21 September 2018)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The first appellant, Nieuco Properties 1005 (Pty) Ltd, is the owner of the farm Glengarry in the province of Mpumalanga. The first appellant and the second appellant, Mr Jacobus Johannes Boshoff, both farm on Glengarry and *inter alia* produce macadamia nuts. The second respondent, the Minister of Rural Development and Land Reform (the Minister), is the registered owner of the adjoining farm Hanging Stone.

On 7 June 2012 a veldfire spread from Hanging Stone to Glengarry, causing extensive damage to the appellants' macadamia orchards. The appellants sued the Minister in delict for payment of these damages. They relied principally on non-compliance with the obligations of owners in terms of the National Veld and Forest Fire Act 101 of 1998 (the Act) in respect of prevention of veldfires and fire fighting. The Minister pleaded that as Hanging Stone had at the time of the veldfire been let to a third party, he was no longer an 'owner' as defined in the Act.

The parties agreed to place this issue as a separated question of law before the Gauteng Division of the High Court, Pretoria, on agreed facts. That court answered the question in favour of the Minister. The appellants appealed to the Supreme Court of Appeal (SCA).

Today the SCA upheld the appeal. It held that the answer to the question of law depended on a proper interpretation of the definition of 'owner' in the Act. The SCA analysed the language of the definition, the context thereof and the purpose of the Act and concluded that the definition is conjunctive and wide. Therefore, so the SCA held, the Minister and the lessee were both 'owners' liable to perform the obligations in terms of the Act and subject to the presumption of negligence in s 34 thereof. The SCA therefore set aside the order of the high court and replaced it with an order answering the question of law in favour of the appellants, with costs.